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JAN 08 2020

Mark C. McCartt, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION

JOHNNY ALLEN DELANO,

20 CV 010 CVE - FHM

Plaintiff,
Supply)

Case No. (Clerk To

v.

CITY OF PRYOR (OKLAHOMA),

Defendant.

CIVIL COMPLAINT

NOW COMES the Plaintiff, JOHNNY ALLEN DELANO, respectfully before this Honorable Court. Plaintiff commences this civil action against the defendant municipality for malicious prosecution by way of civil complaint pursuant to 42 U.S.C. section 1983. In support thereof, plaintiff offers the following particulars:

JURISDICTION: The jurisdiction of this Court is founded upon 28 U.S.C. section 1331, as an action arising under 42 U.S.C. section 1983 presents a federal question.

1. On October 24, 2017, plaintiff was arrested for allegedly violating the Oklahoma felony assault statute. After three scheduled trial dates, where jurors were present for voir dire, the district attorney was told by the presiding judge that if the district attorney could not produce sufficient evidence or secure its witnesses for a trial, then the charge must be dismissed. No agreements, pleas for mercy, nor other form of compromise or negotiations were ever engaged to produce the resulting dismissal of the charges by the defendant.

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2. On April 10, 2019, the defendant herein abandoned the prosecution, and agreed to dismiss the charge because it could not produce sufficient evidence to try the case and/or could not secure the witnesses needed to put to the case before a jury. Plaintiff was detained from October 24, 2017 through April 10, 2019 because of the above stated charges. In turn, plaintiff suffered loss of liberty, loss enjoyment of life, loss of gainful employment, and endured significant humiliation and emotional distress as a result.

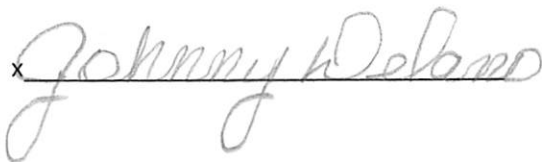
3. In *Wilkins v. DeReyes*, 528 F.3d 790 (10th Cir. 2008), the Tenth Circuit held that a dismissal of the charges in the fashion, and upon the basis, that plaintiff's charges were dismissed sufficient ground for a malicious prosecution claim to proceed against the defendant. Plaintiff does not have access to the state court transcripts and documents due to his current incarceration, however should the court grant plaintiff subpoena power duces tecum for this action, the transcripts and documents will be brought to the light and will prove that plaintiff's charges were dismissed because defendant could not prove plaintiff's guilt beyond a reasonable doubt.

RELIEF REQUESTED: Plaintiff respectfully requests \$1,500,000.00 in compensatory damages for the above stated injuries sustained by the maliciously prosecuted, and dismissed charges.

CONCLUSION

WHEREFORE plaintiff prays to prevail against the defendant in this action for the above stated also foregoing reasons.

Respectfully Submitted,

x 

JOHNNY ALLEN DELANO

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U.S. DISTRICT COURT

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